

REMARKS

Claims 1, 3-5, 7-13, 15, 19-38, 40-42, 46-50, 52-56, and 61-64 are pending and at issue in the current application. Of these claims, claims 3, 8-10, 19, 20, 24, 28-33, 41, 42, 47, and 61 have been confirmed as reciting allowable subject matter. Claims 1, 4, 5, 7, 11-13, 15, 22, 23, 25-27, 35-38, 40, 46, 48-50, 52, 54, and 55 stand rejected as anticipated by Wolf et al. (USPN 2,703,247, hereinafter "Wolf"). Claims 21, 34, 53, 56, and 62-64 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Wolf in combination with Moler (USPN 1,908,165). Of the rejected claims, claims 1, 23, 35, 38, and 56 are the only independent claims. Applicant respectfully traverses the prior art rejections and requests reconsideration in light of the remarks outlined below.

Prosecution History (Repetitive Rejections):

Applicant begins by pointing out that the original examiner in this case, Examiner Melwani, rejected claims 1, 2, 4, 5, 7, 8, 11, 15, 22, 23, 25, 26, 28, 32, 38, 46, 48-52, and 54 as anticipated by Wolf and claims 21, 34, 35-37, 53, 56, and 61-64 as obvious over Wolf in combination with other U.S. Patent(s) in an office action mailed on January 13, 2003. In a July 14, 2003 response to said office action, Applicant addressed the deficiencies of the prior art rejections predicated on Wolf. In response, Examiner Melwani withdrew the rejections based on Wolf. ("Applicant's arguments, see page 12-13, filed July 18, 2003, with respect to Wolf et al. . . . have been fully considered and are persuasive. The rejections have been withdrawn." October 14, 2003 office action, page 7, paragraph 11).

Claims 1, 4, 5, 7, 11, 15, 22, 23, 25, 26, 35, 38, 46, 48-50, 52, and 54 now stand rejected again as anticipated by Wolf, whereas claims 21, 34, 53, 56, and 62-64 also stand rejected again as obvious over Wolf in combination with a new prior art reference (Moler). The differences between the re-rejected claims as they currently stand and the claims Examiner Melwani found to be patentable (not anticipated by Wolf) from the July 14, 2003 response are minor. Specifically, claims 1, 23, 35, 38, and 56 were further amended in an Amendment after Final dated April 14, 2004 to add that the traveling member engages the latch assembly to "mechanically" move the latch assembly. The addition of this term should have no impact as the claims relate to Wolf.

The situation was discussed in a telephone conversation between Examiner Lugo and Matthew McNeill, Intellectual Property Counsel for Rite-Hite, Inc., on November 17, 2004.

As discussed, Section 706.04 of the MPEP recites that “[f]ull faith and credit should be given to the . . . action of a previous examiner unless there is a clear error in the previous action” Examiner Lugo agreed to investigate the repetitive rejections and withdraw them if appropriate. As noted above, only minor changes have been made to a few of the claims, and there is no indication of error (much less clear error) in the previous action removing the Wolf-based rejections. Thus, withdrawal of the repetitive anticipation rejections of claims 1, 4, 5, 7, 11, 15, 22, 23, 25, 26, 38, 46, 48-50, 52, and 54 is appropriate and is respectfully requested. It is also requested that the repetitive obviousness rejections based on Wolf as a primary reference also be withdrawn (claims 21, 34, 53, 56, and 62-64). While these repeated obviousness rejections rely on a different secondary reference (here, Moler) it is submitted that the same arguments against any obviousness rejections based on Wolf apply, and that the repetitive rejections be withdrawn as well. Nonetheless, because the rejections of these claims are technically “new” as based on a new combination of references, the applicant has outlined the deficiencies of these rejections below.

New 102(b) Rejections:

Claims 12 and 13, which both depend from claim 1, stand rejected as anticipated by Wolf. As noted above, independent claim 1 was previously allowed over Wolf by Examiner Melwani and should also be allowed today. Because dependent claims 12 and 13 inherently include each element of the claim from which they depend, and claim 1 is in a condition for immediate allowance, claims 12 and 13 are also in a condition for allowance.

Claim 27 depends from claim 23 and also stands rejected as anticipated by Wolf. Like claim 1, independent claim 23 was previously allowed over Wolf by Examiner Melwani, and there is no evidence of clear error in this allowance. Thus, because dependent claim 27 inherently includes each element of the claim from which it depends, and claim 23 is in a condition for immediate allowance, claim 27 is also in a condition for allowance.

Independent claim 35 and claims 36 and 37, which depend therefrom, stand rejected under 102(b) as anticipated by Wolf. Independent claim 35 recites a method of operating a sectional door that includes a latch assembly moveable between a release position and a door-blocking position. The method comprises “maintaining the latch assembly at its released position while the plurality of door panels move from their closed position toward their open position and subsequently mechanically moving the latch assembly to its door-blocking

position in response to a traveling member engaging the latch assembly” as the door moves to its open position.

Wolf, on the other hand, does not suggest a latch assembly maintained in a released position. In fact, the bar latch disclosed in Wolf has no maintained release position, as the bar is biased by gravity to its blocking position at all times. *A fortiori*, Wolf cannot teach a method of maintaining a latch assembly in its released position, as is claimed here. Wolf does not anticipate independent method claim 35 or the claims depending therefrom, leaving them in a condition for allowance.

Claims 40 and 54, which both depend from claim 38, stand rejected as anticipated by Wolf. As noted above, independent claim 38 was previously allowed over Wolf by Examiner Melwani, an allowance that was not in error and should be given full faith and credit. Because dependent claims 40 and 54 inherently include each element of the claim from which they depend, and claim 38 is in a condition for immediate allowance, claims 12 and 13 are also in a condition for allowance.

New 103(a) Rejections:

Claims 21, 34, and 53 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Wolf in view of Moler. Claims 21, 34, and 53 depend from claims 1, 23, and 38, respectfully, and each of these dependent claims add a second latching member to the recitations of the independent claims.

The invention disclosed in Wolf is quite different from the subject matter claimed in claims 21, 34, and 53. Wolf describes an older door system that is plagued by the clacking and snapping-movement effects that the current invention overcomes. In the description of related art section of the present application, for example, this snapping movement is described in detail. The door disclosed by Wolf must engage and knock out a releasing device as the door is raised, thus creating undesirable wear on door parts, as well as a noise hazard. On page 6, line 11 *et seq.*, the present application describes an example structure that prevents such snapping or clacking in the form of a latch assembly that preferably has a release position that is a maintained release position. Wolf does not teach a latch assembly with a maintained release position.

The apparatus of Wolf, as described in column 3, line 38 *et seq.*, has a strike pin 126 positioned such that, as the door is raised, the pin 126 ratchets up one or more teeth of a latch bar 88. The pin must engage the bar and knock it out of the way for the Wolf device to block downward movement of the door. Thus, the bar has no maintained release position, as the bar is biased by gravity to its blocking position at all times. The deficiencies of Wolf are further demonstrated by the fact that there is no traveling member. Contrary to the Office Action's suggestion, the pin does not engage the latch assembly to move "the latch from the maintained release position to the door-blocking position." As suggested above, the latch bar of Wolf has no maintained release position.

Turning now to Moler, the Office Action incorrectly interprets Moler as teaching "a door latching system with two latch assemblies (14 and 16), wherein one of them (16) inhibits the door from moving to the open position." (Page 4, paragraph 5) As described in the specification of Moler, feature 14 is a stop plate adapted to help secure the alignment of a garage door post in a working position. Feature 14 is not a latching assembly adapted to hold the door in an open or closed position. Nor is feature 16 a latch assembly adapted to hold the door in an open or closed position. Instead, feature 16 is a bolt that is adapted to guide and secure the lower portion of the door post in a working position. In general, the dual latching system of Moler is designed to lock garage door posts in a working position (when latched) or to allow the door posts to be removed (when unlatched). There is no suggestion in Moler that one latch assembly be used to hold a door in an open position and a second latch assembly be used to hold a door in a closed position, as claimed in 21, 34, and 53.

There is no suggestion in Wolf or Moler, alone or combined, that would lead one of ordinary skill in the art to the subject matter of claims 21, 34, and 53. Therefore, claims 21, 34, and 53 are in a condition for immediate allowance.

Claims 56 and 62-64 also stand rejected under 103(a) as unpatentable over Wolf in combination with Moler. Independent claim 56 recites a method of operating the door system recited in claim 1, a method that includes (1) sensing that the door panels have reached the open position in response to the traveling member engaging the latch assembly, (2) mechanically actuating the latch assembly to move it from the release position to the door-blocking position, and (3) latching the sectional door upon actuating the latch assembly to prevent the door from closing.

Differences between the method claimed here and the subject matter of Wolf have been outlined in connection with other claims and apply with equal weight to the independent claim 56. Further, the reliance on Moler seems misplaced, as the Office Action suggests that Moler teaches a second latching assembly to inhibit the door from moving to the open position. Because method claim 56 does not recite a method of using a second latching assembly, nor do dependent claims 62-64, Moler has no relevance to these claims. As such, the obviousness rejections of claims 56 and 62-64 based on the combination of Wolf and Moler should be removed and the claims allowed.

Conclusions:

Claims 1, 4, 5, 7, 11, 15, 21-23, 25, 26, 34, 35, 38, 46, 48-50, 52-54, 56, and 62-64 were rejected by a previous examiner in view of Wolf (alone or in combination with another reference), rejections that were withdrawn. Now, substantially the same claims have been rejected again in view of Wolf (alone or in combination), although there is no evidence that the previous examiner's actions were in clear error, thus leaving the claims in a condition for immediate allowance. Claims 12, 13, 21, 27, 34-36, 37, 53, 56, and 62-64 stand rejected for reasons different than those asserted by the previous examiner, but in view of the foregoing remarks, those rejections, like the previous, are baseless and should be removed. All pending claims are in a condition for immediate allowance.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

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Respectfully submitted,

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